APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., OKLAHOMA CHAPTER-BUILDERS DIVISION, *Plaintiff*

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 612, LABORERS NATIONAL CRAFT BOARD AND CONSTRUCTION INDUSTRY STABILIZATION COMMITTEE, *Defendants*, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, *Intervenor.*

No. 72-544 Civ.

JUDGMENT

(Filed Sept. 28, 1973)

Based upon the Memorandum Opinion of the Court this day filed, it is

THE JUDGMENT AND DECREE of the Court:

1. That the purported contract of March 13, 1972, between the plaintiff, The Associated General Contractors of America, Inc., Oklahoma Chapter-Builders Division and Laborers' International Union of North America, Local 612 is invalid, and was and never became a valid existing contract because it was not entered into by competent or authorized bargaining agents of Local 612, and this fact was known to plaintiff, and

2. That there is no valid or existing contract between plaintiff and Laborers' International Union of North America, Local 612, and none existed to be approved by the defendants, Laborers National Craft Board and Construction Industry Stabilization Committee.

Dated this 28th day of September, 1973.

/s/ LUTHER BOHANON
Luther Bohanon
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 72-544 Civ.

MEMORANDUM OPINION

(Filed Sept. 28, 1973)

This case involves the validity or invalidity of an alleged contract entered into between The Associated General Contractors of America, Inc., Oklahoma Chapter-Builders Division as plaintiff and Laborers' International Union of North America, Local 612, et al., defendants, and Laborers' International Union of North America as intervenor. This Court on the 1st day of November, 1972 entered a judgment holding the contract of March 13, 1972, between Local 612 of Laborers' International Union of North America and The Associated General Contractors of America, Inc., Oklahoma Chapter-Builders Division to be void and unenforceable. The Associated General Contractors of America, Inc., Oklahoma Chapter-Builders Division perfected a simultaneous appeal from the Court's Judgment to the United States Court of Appeals for the Tenth Circuit and to the Temporary Emergency Court of Appeals of the United States.

The Court of Appeals, Tenth Circuit, by Mandate dated April 27, 1973, granted appellant's Motion to Dismiss on the ground that the Temporary Court of Appeals in Washington, D. C. had taken jurisdiction of the appeal.

The Temporary Court of Appeals of the United States filed its Opinion in this Court on May 4, 1973, reversing the Judgment of the District Court, holding among other things, that the Construction Industry Stabilization Committee and Laborers National Craft Board were necessary parties and ordered that these parties be brought into the case and that this Court then proceed to final determination of the cause. These additional parties were brought into the case, filed an Answer on August 9, 1973, and filed in

open court on September 13, 1973, their Motion to Dismiss and Brief in support thereof.

Thereafter, and on the 13th day of September, 1973, this cause came on regularly for trial before the Court, all parties appearing by their respective counsel and announced ready for trial. Counsel made argument before the Court, but declined to offer testimony and submitted the case to the Court for decision on the prior record and subsequent pleadings, briefs and arguments.

FINDINGS OF FACT

1. Laborers' International Union of North America, Local 612 (hereinafter referred to as "Local 612 or defendant") had for many years negotiated collective bargaining agreements on behalf of its members, with the Associated General Contractors of America, Inc., Oklahoma Chapter-Builders Division (hereinafter referred to as "plaintiff").

2. In November, 1968, Oklahoma Laborers' District Council was established by the Laborers' International Union of North America (hereinafter referred to as "intervenor"). Local 612 is included in this District Council.

3. Under the respective constitutions of Local 612, the District Council and intervenor, it is provided that when a District Council is chartered, all local unions within the territorial or trade jurisdiction are required to affiliate with the District Council and remain affiliated therewith. Under the constitutions the District Council was granted exclusive authority:

> "to negotiate, bargain for and enter into understandings and agreements with employers, for and in behalf of its affiliated local unions and to enforce and police the observance thereof by employees and employers, local unions and their members and when after due deliberation, it believes and deems it necessary, to take such proper and lawful economic action as may be required to accomplish and effectuate the welfare of its affiliated local unions and members."

4. A collective bargaining agreement was entered into between Local 612 and the plaintiff Chapter in 1968 which was scheduled to expire on June 1, 1972.

5. At a specially called meeting of the Executive Board of Local 612 held on January 24, 1972, Mrs. Ruth Ann Leslie, manager of plaintiff chapter, advised the Local officers that plaintiff desired to negotiate a new contract with Local 612. On behalf of the defendant Local, McKinley Marzette, in his capacity as the Local's business manager, advised Mrs. Leslie that "the officers could not sign a contract with The Association of General Contractors of America, Inc., (plaintiff), that it would have to be negotiated by the District Council Committee."

6. A letter dated February 7, 1972, from Jack Ridenour, Business Manager of the Oklahoma Laborers District Council, addressed to Mrs. Leslie, as manager of plaintiff's Chapter, advised that a District Council bargaining committee was prepared to meet with plaintiff for the purpose of negotiating a new contract on behalf of the defendant Local 612.

7. Thereafter three members of the defendant Local 612, without knowledge or consent of Intervenor, and the plaintiff met on March 13, 1972, and entered into a purported contract covering a period of time after the then existing contract between the parties expired. At the meeting between the parties resulting in the alleged contract of March 13, 1972, between Local 612 and the plaintiff, no officer of Local 612 participated, but only the three members and an attorney purporting to represent Local 612. That this contract was made in fraud because Local 612 was without authority to make the contract and the plaintiff knew this.

8. After a trial between the then parties and in accordance with an Opinion filed by this Court, a Judgment was

entered which specifically provided by paragraph 2 as follows:

> "2. That the purported contract of March 13, 1972, between Local 612 of Laborers' International Union of North America and The Associated General Contractors of America, Inc., Oklahoma Chapter-Builders Division is void and unenforcible."

9. After the entry of the Judgment last above mentioned, an appeal was perfected to the Temporary Emergency Court of Appeals of the United States, resulting in the Opinion of said Court above referred to.

10. Neither the officers of Local 612 nor the District Council signed the contract on March 13, 1972, but the same was signed by three members of an alleged bargaining committee and Charles W. Schwoerke, an attorney who was not then an employee of Local 612; thereafter this contract of March 13, 1972, between Local 612 and the plaintiff was disapproved by the Craft Board and by the Construction Industry Stabilization Committee.

11. The Stabilization agencies last mentioned, however, were not themselves parties to this proceeding, and the Temporary Emergency Court of Appeals remanded this case to this Court "for further proceedings not inconsistent with (its) Opinion."

12. In its Opinion the Temporary Emergency Court of Appeals of the United States expressly declared:

> "The Local's parent International Union (International) has in recent years established a District Council having jurisdiction over the entire State of Oklahoma in an attempt to unify the bargaining efforts of its locals in the state. Apparently Local 612 has resisted affiliation with the District Council of the International Union, at least insofar as preserving its practice of directly bargaining with AGC. This is a problem not before us. The Local and AGC formally signed the collective bargaining agreement on March

> 13, 1972. International claimed before the trial court that this collective bargaining agreement was invalid because the Local was not represented by a proper bargaining agent. The trial court did not resolve this issue and we do not reach it here." 476 F.2d at 1391.

This Court finds that Local 612 did not resist affiliation (paid dues, etc.), but contended that its voting power in the Council should be in proportion to its membership.

13. The Court now holds and finds that Local 612 was not represented by its authorized bargaining agent at the time of the execution of the alleged contract of March 13, 1972, between Local 612 and the plaintiff.

14. In addition to the non-existing authority of the self-styled negotiators for Local 612, the Court finds that the plaintiff had knowledge at least by January 24, 1972, that Local 612 was no longer in a position to negotiate independently of the District Council. The record demonstrates that between 1969 and 1972 on behalf of eight other locals in Oklahoma plaintiff had negotiated contracts with such locals through the District Council, and plaintiff then knew and was put on notice that Local 612 had no authority to negotiate a contract independent of the District Council; that the responsibility of negotiating contracts was for the District Council Committee and not that of the Local and, therefore, the alleged contract of March 13, 1972, between the plaintiff and Local 612 was clearly unauthorized and void, not having been negotiated by authorized representatives of the union (District Council).

Conclusions of Law

1. Persons dealing with an alleged agent who are aware of the limitations of authority of such agent are bound thereby, and such persons cannot claim to have been misled into reliance on authority which they knew to be non-existent.

2. Plaintiffs in this case seek a declaratory judgment upholding the validity of the contract allegedly entered into on March 13, 1972. When a contract is entered into by persons without authority to act for the principal, but who in fact lack such authority, and the other party to the contract knows of such lack of authority, then said party is not entitled to a declaratory judgment upholding the validity of such contract.

3. A party dealing with an alleged agent, who has been put on notice of lack of agent's authority to bind principal, cannot rely upon nor enforce the unauthorized acts of the alleged agent.

4. Local 612 on March 13, 1973, was not authorized to negotiate a contract, this function belonging to the union's District Council. The local's authority ceased in November, 1968, when the Oklahoma District Council was legally established by the union.

5. The defendants, Laborers National Craft Board and Construction Industry Stabilization Committee have filed a Motion to Dismiss in this case on the ground that the alleged collective bargaining agreement between Local 612 and plaintiff has been approved by them, and such Motion is hereby denied upon the ground that Laborers National Craft Board and Construction Industry Stabilization Committee were without authority to approve a non-existent contract.

6. There is no valid and existing contract between plaintiff and Laborers' International Union of North America, Local 612. If there is to be a contract, it must be negotiated and agreed upon between properly authorized parties, that is, the plaintiff and the District Council of Laborers' International Union of North America.

Dated this 28th day of September, 1973.

/s/ LUTHER BOHANON
United States District Judge